

1 some sort of problem with Mr. Nourain's understanding of
2 what he was supposed to do or could do with regard to the
3 FCC's rules?

4 A No. I think what it says to me is that it
5 outlines the policy that should prevail and I thought was
6 prevailing regarding the filing for licenses and the
7 activation of paths and advises us that STAs should be
8 filed, and we did so.

9 Q The sentence that Ms. Richter wrote, quote -- and
10 I'm reading here -- "Some things were revealed during these
11 conversations that gave both Behrooz and I pause. In order
12 to ensure that Liberty does is in strict accordance with the
13 rules, and to ensure that your competitors are given no
14 instrument against you, I'm writing this letter to detail
15 the parameters," etcetera. Does that passage give you any
16 concern at all that perhaps Mr. Nourain might have done
17 something that was not consistent with the FCC rules?

18 A No.

19 Q Okay. Does it give you any concern that
20 Mr. Nourain, in the future, that is, the future with respect
21 to this letter, did do something that was inconsistent with
22 the FCC rules?

23 A No, it does not, especially in the context of what
24 follows, which is her explanation of the procedures that
25 should be followed and which we then followed, and I don't

1 detect anything in the letter, especially its conclusion,
2 that indicates what you say.

3 Q Okay. Now with respect to the matter of the STA
4 applications that was apparently discussed between you and
5 Ms. Richter at the end of April 1993, did you involve
6 Mr. McKinnon in any of those discussions?

7 A I don't recall if I did. I may have, but I don't
8 recall how active he was in the process at that point.

9 Q Okay. I just have a few more questions about
10 Mr. Nourain. Mr. Nourain is not a native English speaker,
11 is he? That's not his first language?

12 A I don't know. I have no idea what his first
13 language is.

14 Q Well, but do you think that English is his first
15 language?

16 A I honestly don't know what his first language is.
17 I haven't had lengthy discussions with Behrooz and spent a
18 lot of time with him, so I really don't know. He has a
19 foreign accent, but whether it's Iranian or whether it's
20 Iraqi or whether it's Lebanese or whether he was born there
21 or his parents reared him here, I really don't know.

22 JUDGE SIPPEL: The question was non-English, not
23 necessarily what his first language is or was, but whatever
24 it is, it's non-English. But that's how I heard the
25 question.

1 MR. BECKNER: That's correct.

2 THE WITNESS: That could be. I don't know.

3 BY MR. BECKNER:

4 Q The reason I ask, the next question is, were you
5 ever concerned that Mr. Nourain's command of the English
6 language might cause inadvertent communications problems
7 between him and other people with whom he was dealing with,
8 that there might be misunderstandings because the nature of
9 his command of the English language is not as good as
10 someone else's?

11 A That complaint was never made to me, nor did I
12 ever have that kind of problem in the brief conversations I
13 had with him. And we do performance reviews all the time,
14 and no one ever said, as I recall in any review, that he had
15 a communications problem.

16 Q All right. Now I'd like you to take a look at Tab
17 14 in the thin notebook. For the record, that portion has
18 been identified or marked for identification as TW/CV
19 Exhibit 65. This document has some handwriting, it looks
20 like a series of initials up on the right side. Is that
21 your handwriting?

22 A Yes, it is.

23 Q Okay. Can you just tell us the names of the
24 person who these initials stand for?

25 A LC is Lloyd Constantine, counsel to Liberty; HPM

1 is Howard P. Milstein, chairman of Liberty; ELM is Edward L.
2 Milstein, vice chairman of Liberty; and ASB is Andrew
3 Berkman, who is general counsel for Liberty.

4 Q Okay, and what's the writing underneath those
5 series of initials?

6 A It says "Cover Only."

7 Q Okay. Does this mean that you routed to the
8 individuals whose initials are listed there only this cover
9 memo of the inventory?

10 A That's what I presume it means.

11 Q Can you tell us now any particular reason why you
12 elected to route this cover memo to the individuals whom
13 you've identified?

14 A Very often when I would get communications from
15 counsel, I would route them to counsel in New York and
16 sometimes copy Howard and Ed. But usually I'd copy Howard
17 and Ed regarding anything I sent to counsel, so they knew
18 what I sent to counsel. Since this was a memorandum from
19 counsel to me and it had Esquire on it, I presumed it should
20 be seen by our lawyers in New York, but not necessarily the
21 whole document behind it.

22 Q Would it be fair to say that you thought it was at
23 least worth while that your lawyers in New York were aware,
24 by reading this memo, that such an inventory existed?

25 A That's correct.

1 Q And you assumed that if they really wanted to take
2 a look at the inventory, they would call you up and ask you
3 for a copy?

4 A That's correct.

5 Q Do you recall whether or not anyone in fact did
6 call you up and ask you for a copy of this inventory?

7 A I don't recall if they did.

8 Q Now I believe, Mr. Price, that on previous
9 occasions you have been asked whether or not you recall
10 receiving a copy of this inventory and Mr. Lehmkuhl's cover
11 memo, and I think at that time you said you couldn't recall
12 one way or another, and the question I want to ask you now
13 is seeing this particular document, does that refresh your
14 recollection at all about having received Mr. Lehmkuhl's
15 February 24, 1995 inventory?

16 A I think what I said in prior testimony was that I
17 couldn't recall specifically that document. But if it was
18 sent to me, I presume I did receive it and read it.

19 Q Okay. I didn't mean to mischaracterize your
20 testimony. I'm simply asking you today does seeing this
21 document here, TW/CV marked for identification 65, refresh
22 your recollection further about receiving the document in
23 1995?

24 A No, it doesn't refresh it further. I presumed I
25 received it and I think this confirms from my note that I

1 did receive it.

2 Q Okay. Do you know whether or not you would have
3 sent other license inventories that Liberty had been
4 supplied earlier from Pepper and Corazzini, that you would
5 have sent those or the cover memo of those to any of the
6 persons whose initials you've written out?

7 A I might have, but I don't recall. Generally a lot
8 of paper that's attached to these kind of inventories, so
9 I'm sure I wouldn't have passed that along. Would I have
10 passed along the cover letter? Perhaps.

11 Q Was there anything that you expected any of the
12 persons whose initials you've written out here, to have done
13 upon receipt of this document, Exhibit 65?

14 A No. I don't think my note requested any action.
15 I think it was FYI. Here's a letter we received. You
16 should know about it.

17 MR. BECKNER: Your Honor, at this time, I'd like
18 to move TW/CV Exhibit 65 into evidence.

19 JUDGE SIPPEL: Is there any objection?

20 MR. SPITZER: No objection, Your Honor.

21 JUDGE SIPPEL: This is identified at TW/CV Exhibit
22 65. It's a memo from Mr. Lehmkuhl to Mr. Price regarding
23 inventory on ATGHC licenses, and it's dated February 24,
24 1995. It's identified and received into evidence at this
25 time at TW/CV No. 65.

1 (The document referred to was
2 marked for identification as
3 TV/CV Exhibit 65 and received
4 into evidence.)

5 MR. BECKNER: I have no further questions of this
6 witness.

7 JUDGE SIPPEL: All right. Mr. Weber?

8 CROSS EXAMINATION

9 BY MR. WEBER:

10 Q Good morning, Mr. Price.

11 A Good morning, Mr. Weber.

12 Q As you recall, I'm Joseph Weber, representing the
13 Wireless Telecommunications Bureau. If you could turn back
14 to Tab 9 in -- or actually, I'm sorry. It's Exhibit 51 in
15 the larger book, which was April 20, 1993 letter by Jennifer
16 Richter. Now on here, the handwriting, that is Behrooz's
17 handwriting, correct, Mr. Nourain's?

18 A Yes. It looks to be Behrooz's handwriting.

19 Q Upon reading this letter today, what is it that
20 you think Mr. Nourain wanted you to advise me about, because
21 he appears to be asking you to review and advise?

22 A I presume that he was normally processing the STAs
23 through Operations with Bruce McKinnon, in coordination with
24 Washington counsel, and I was presuming here that since it
25 involved Washington counsel, and Bruce was phasing out, that

1 he wanted me to okay the STAs which were advised by
2 Washington counsel.

3 Q You don't recall talking to Mr. Nourain, though,
4 about the STAs during late April-early May 1993?

5 A No, I do not.

6 Q Likewise, you don't recall speaking to Ms. Richter
7 about STAs in late April 1993?

8 A Well, I could have spoken to her. As a matter of
9 fact from the billing record I looked at, I gather I did
10 upon receipt of this letter contact her and discuss the
11 filing of the STAs.

12 Q But you just don't recall specifically?

13 A I don't recall specifically, but I gather from the
14 billing record that I did talk to her. I'd talked to her on
15 other occasions about zoning matters. I recall that
16 vividly. On the subject of STAs, the billing records,
17 together with this letter, indicate that I did speak to her
18 to authorize the filing of these STAs.

19 Q I'd like you to look now at TW/CV Exhibit 65,
20 which is Tab 14 on the smaller notebook, and your
21 handwriting on the cover of this. Do you recall when you
22 wrote those initials and then forwarded this on to those
23 individuals?

24 A I presume it was shortly after I received the
25 memorandum. I don't let large amounts of paper accumulate

1 on my desk. I usually pass them on to counsel or whoever
2 should receive them. So I presume it was shortly after
3 receipt of the memo.

4 Q Was the Constantine firm -- and Lloyd Constantine
5 was representing Liberty in February of '95?

6 A That's correct.

7 MR. WEBER: Thank you. That's all the questions
8 the Bureau has.

9 JUDGE SIPPEL: I just have a few things here. Was
10 Mr. Constantine -- in February of '95, was he actively
11 involved in communications issues on a continuing basis?

12 THE WITNESS: I generally copied the Constantine
13 firm on most legal matters involving the company, because
14 they were to coordinate the activities of the various law
15 firms that we were using. So I would routinely copy them so
16 they would know which matters were active with which firms,
17 so they could approve the billing and determine who -- how
18 to route different things to different people.

19 JUDGE SIPPEL: So would you characterize your
20 routing this Exhibit 65 as just a routine paper shuffle kind
21 of thing?

22 THE WITNESS: Informational, so they knew that
23 this matter was being worked on by the Pepper Corazzini
24 firm.

25 JUDGE SIPPEL: Nothing specifically that you

1 wanted Mr. Constantine or any of the other people to focus
2 on?

3 THE WITNESS: No sir.

4 JUDGE SIPPEL: And you're sure that that was --
5 following up on what Mr. Weber asked you, you're sure that
6 that was sent on or around the 24th of February of '95, and
7 that it was not sent in connection with a search of files,
8 say, for the internal audit or anything that was done around
9 the time that it was determined that there had been some
10 unauthorized activations?

11 THE WITNESS: No sir. If it were in connection
12 with that very intensive search, I'm sure I would have given
13 the whole document, with everything attached, and that's why
14 I believe it was done right when I received it. And that
15 would have been very common for me to FYI these people, that
16 this communication had taken place.

17 JUDGE SIPPEL: Did you get any feedback from it?

18 THE WITNESS: None that I can recall.

19 JUDGE SIPPEL: From any of these people?

20 THE WITNESS: No sir.

21 JUDGE SIPPEL: And you say that was your practice
22 to do that with a document that came in from outside
23 counsel?

24 THE WITNESS: Yes, unless it was an STA or
25 something that was in the normal course, where often I've

1 testified before I would get documents that I would route to
2 other people, that I didn't keep files of like STAs that
3 would arrive. I would route them to the appropriate person
4 that kept the file.

5 JUDGE SIPPEL: But, well then what -- maybe you
6 can help me a little bit by explaining what's the criteria
7 that you used for something that would be sent to Mr.
8 Constantine and these other executives, as opposed to
9 something that, like STA that you say that you wouldn't
10 send?

11 THE WITNESS: Well, this appeared to be a summary
12 document rather than a regular document, and I can't recall
13 exactly why, but I wouldn't have sent them a copy of an STA
14 that came in. I would have sent them something that looked
15 like a routine one of many. This looked like a singular
16 document or something that required more than, you know, a
17 routine transaction. So it was FYI to them that I had
18 received this and what was going on.

19 JUDGE SIPPEL: So this was something that was
20 maybe a little bit out of the ordinary? This was just a
21 little bit out of the ordinary of the regular flow of
22 paperwork?

23 THE WITNESS: That's correct sir.

24 JUDGE SIPPEL: So anything that looked like this,
25 immediately you would do what you did here with this

1 Exhibit 65?

2 THE WITNESS: Yes sir, generally I would.

3 JUDGE SIPPEL: Well, did you make any exceptions?
4 I mean was there a standard by which you'd make an
5 exception? I'm not asking you whether you can recall any,
6 but --

7 THE WITNESS: No, there was no standard. If it
8 looked like something worth flagging, that here was
9 something that is not routine, someone's done something that
10 they, you know, normally don't do every month, they should
11 know about it.

12 JUDGE SIPPEL: And how was that process
13 established? Was there -- did you give this a specific
14 thought and say that "Well, I'd better get some kind of
15 system going here with all you gentlemen," or is this
16 something that just evolved?

17 THE WITNESS: It evolved. I would get -- at this
18 time, I think we had -- we were working actively with
19 Ginsberg Feldman on certain matters, to McNaughton on
20 certain matters, Pepper Corazzini on certain matters, with
21 the Constantine firm on ceratin matters, and it was more if
22 it looked like it was not some routine document that I would
23 see as part of a regular process, I would send it to
24 Constantine so they would know a certain matter was being
25 worked on. But there was no index for it or no procedure.

1 JUDGE SIPPEL: This was a system that you devised
2 yourself, but it sort of evolved? Am I right?

3 THE WITNESS: That's correct. As we got more
4 lawyers and there were more matters in the hands of
5 different firms, I would flag generally Andy Berkman or
6 Lloyd Constantine that the firm was working on a certain
7 matter.

8 JUDGE SIPPEL: Okay. Well, I understand your
9 explanation with respect to the attorneys, that Mr.
10 Constantine would kind of be acting as a --

11 THE WITNESS: Clearinghouse.

12 JUDGE SIPPEL: Good word, clearinghouse, with
13 respect to the other outside attorneys. And I can
14 understand why you'd also then be sending it in that context
15 to Mr. Berkman, who was your in-house counsel.

16 THE WITNESS: That's correct.

17 JUDGE SIPPEL: But why would you be sending it to
18 the two Mr. Milsteins?

19 THE WITNESS: Almost everything that I sent to
20 anyone I would copy Howard and Edward on.

21 JUDGE SIPPEL: Did they tell you they wanted you
22 to or did you just do it?

23 THE WITNESS: No. From the time I first joined
24 Liberty, I think I copied them on most things I would send
25 to anyone. It was just my normal style to copy them because

1 we worked closely together on all this and our offices were
2 next door to one another. So to keep them in the loop on
3 most matters, either verbally or in writing.

4 JUDGE SIPPEL: So that you sent it to them; you
5 expected them to read it?

6 THE WITNESS: Some things I expected them to read.
7 Sometimes I expected them to just say okay, something's
8 passing by my desk, but I didn't distinguish between what
9 they might be interested in reading or not reading. I was
10 passing it by them so if they had any comment at our
11 operations meeting or walking to the coffee machine, we
12 could talk about it.

13 JUDGE SIPPEL: Well, did any of them ever tell you
14 that you're sending me too much paper; I'm not going to read
15 that stuff anyway?

16 THE WITNESS: No, they loved paper.

17 JUDGE SIPPEL: So you assumed that they'd read it?

18 THE WITNESS: People who love paper don't
19 necessarily read paper. So I can't say that for sure.

20 JUDGE SIPPEL: But you worked very closely with
21 them, but you don't know whether they read these things?

22 THE WITNESS: No. Sometimes when they'd read
23 them, I would often get a note back saying, with a little
24 marginal note saying "Interesting" or, you know, "Route to
25 Jim" or most often "How much," dollar sign, question mark.

1 That was normally the kind of note I would get from Howard
2 Milstein.

3 JUDGE SIPPEL: But I take it that you thought that
4 there was enough significance to the information that Mr.
5 Lehmkuhl was giving you, that you should, in your capacity
6 as the president of the company, furnish copies to the
7 Milsteins, the two Milsteins?

8 THE WITNESS: That was normal to furnish them
9 copies of almost everything that went out of my office, and
10 my secretary would tell you that almost everything I send
11 out I send them a blind copy. I'm surprised I even put their
12 names on it, because they would normally get it anyway
13 because the instructions were "Oh yes, and Howard and
14 Edward."

15 JUDGE SIPPEL: But there would have to be some
16 degree of significance to the document, wouldn't there,
17 before you would send it to them?

18 THE WITNESS: No. I would send them almost
19 everything I sent out of my office to anyone. I could blind
20 copy or show a copy to them. That's still my practice.

21 JUDGE SIPPEL: Now with respect to -- you did
22 testify, right, that you did receive and you had a
23 recollection of -- I think it's your testimony -- that you
24 have a recollection of reading this letter, Exhibit 51?

25 THE WITNESS: Yes sir.

1 JUDGE SIPPEL: Ms. Richter's letter. And I
2 believe that we have in that exhibit one of these copies is
3 from Liberty's files. In fact, probably the one that has
4 Mr. Nourain's little note on it is from your files. When I
5 say "yours," I mean Liberty's files?

6 THE WITNESS: Yes sir, I presume so.

7 JUDGE SIPPEL: Now in light of what you said
8 before about how things get copied to other people, can I
9 assume that copies of this were also sent by you to the
10 Milsteins, that is, Ms. Richter's letter?

11 THE WITNESS: I would copy them on things I sent
12 out to other people. Whether I sent this out to anyone, I
13 don't know. I may just have called Jennifer and said "Let's
14 file the STAs." I mean clearly Behrooz sent this to me.
15 Whether I sent it out to anybody, I don't know. I didn't
16 necessarily, I think, need to be sent out to anyone.

17 I took this to be a request to me that Bruce would
18 normally field, and I was fielding for him and that yes, it
19 sounded like what we should do and sounded like what I had
20 authorized to be done from the beginning, so I didn't think
21 it was anything exceptional that required yet another step.

22 JUDGE SIPPEL: Well, how come it wasn't sent to
23 outside counsel? Was Mr. Constantine retained by Liberty at
24 that time?

25 THE WITNESS: It wasn't sent from whom to who?

1 JUDGE SIPPEL: Well, to you. I think -- well, let
2 me give you --

3 MR. BEGLEITER: Your Honor --

4 JUDGE SIPPEL: Let me ask him the question, okay?
5 The question I have is in April of '93, was Liberty
6 utilizing the services of Mr. Constantine?

7 THE WITNESS: I don't recall. I don't know
8 when --

9 MR. SPITZER: For the record, the answer is no.
10 Not until the year --

11 MR. BEGLEITER: The firm wasn't founded until '94.

12 JUDGE SIPPEL: All right. Was there any outside
13 law firm that was doing then -- I can't ask the question
14 that way. Did you have any outside law firm at that time
15 that was acting as a clearinghouse for legal matters?

16 THE WITNESS: No, we did not, sir.

17 JUDGE SIPPEL: Did you have an outside firm that
18 was having -- as to which you had a relationship to what you
19 have with the Constantine firm, in the sense of advising you
20 on communications matters on a regular basis, except from
21 Pepper and Corazzini, of course?

22 THE WITNESS: Ginsberg Feldman, who represented us
23 on matters at the -- regulatory matters at the Commission,
24 such as the Telco Act and how we should handle different
25 filings for program access and issues like that, which did

1 not involve licensing.

2 But they were not a clearinghouse. They were not
3 a general counsel. They were retained specifically for
4 dealing with the FCC on regulatory matters other than
5 licensing, and Mr. McNaughton was dealing on contract work
6 in New York and so certain lawyers had very specific narrow
7 assignments, but there was no general firm that was a
8 clearinghouse for all our legal work, to review and approve
9 bills, assign which firm should handle which matter, and
10 advise us on the whole totality of the issues.

11 JUDGE SIPPEL: At the time that you received this
12 April communication, Ms. Richter's letter, Exhibit 51, did
13 you --

14 How would you categorize the importance of the
15 information she reported to you there as compared with the
16 importance of the information on this Exhibit 65, which was
17 actually, you know, as you said, only a cover memorandum?

18 THE WITNESS: Well, the difference I would
19 characterize as the February 24, '95 memorandum is
20 informational, an informational summary that was compiled
21 that doesn't request any action from me. The April 20
22 letter to Bruce McKinnon specifically recommends the filing
23 of STA's, and Behrooz's note to me also asks me to look at
24 this and take some action. So one does and one doesn't.

25 JUDGE SIPPEL: When you say "take some action,"

1 what does he ask you to do?

2 THE WITNESS: Well, advise as to what should be
3 the result, and I took some action and I had a conversation
4 with Jennifer Richter and asked her, I would gather, to
5 process those STA's.

6 JUDGE SIPPEL: Well, I would -- Well, based on the
7 testimony that I've heard in this case, I don't think that
8 Mr. Nourain was in, was certainly not in a position to
9 instruct you as to what you're supposed to do with
10 something. He was, in fact he was subordinate to yourself.
11 Isn't that correct?

12 THE WITNESS: That's correct.

13 JUDGE SIPPEL: So would you, just without anything
14 further would you act on a note that he wrote on this letter
15 without calling him up and saying, you know, what did you
16 have in mind, or is this something that's really bothering
17 you?

18 I mean, this is something that, it seems to me,
19 it's something that's out of the ordinary, sending you an
20 item like this and saying, "Please advise."

21 THE WITNESS: No. I presume it was because Bruce
22 was phasing out and Behrooz would normally turn to Bruce to
23 give him instruction on whether a letter from counsel should
24 be acted upon, and I presume Behrooz was asking me here,
25 even reading it now, to get involved and respond to counsel,

1 as I presume that he didn't have the authority or in the
2 normal course wouldn't do that, that someone else in
3 Operations would, probably Bruce. And I imagine Bruce
4 deflected it to me because he was on his way out.

5 And that's just trying to piece together why
6 Behrooz would have sent this to me at this point. But I had
7 no regular contact with Behrooz, so it wasn't like I could
8 cite you how I did it in one case versus the other.

9 JUDGE SIPPEL: Well, what kind of significance do
10 you attribute to this letter of April 20, 1992, from Ms.
11 Richter? I mean, is this a significant letter? Is this a
12 routine letter? Is this something that you really wouldn't
13 pay too much attention to?

14 THE WITNESS: Well, I'd pay attention to it
15 because it states our, the policy that I thought we were
16 following, the procedure I thought we were following. And
17 she says that, you know, that it takes time to get the
18 licenses, and you should be aware of this, and there is a
19 lag here, and some STA's should be filed to compensate for
20 the lag.

21 And to me it said early on that if we have a delay
22 in getting our licenses we should file for STA's, and I
23 presumed that she was restating our policy and highlighting
24 the fact that the delays were in fact perhaps even longer
25 than we anticipated, and that to cure that we should file

1 STA's because the licenses wouldn't be forthcoming on the
2 timely basis we needed to fulfill our commitments. So --

3 JUDGE SIPPEL: Well, yeah, that's -- But that's
4 sort of the easy part of the letter.

5 What about this part of the letter up front, where
6 she says the first thing -- and it's a two page letter that
7 covers almost two full pages -- and she starts off by saying
8 that there are some things that in conversations with Mr.
9 Nourain that gave both Mr. Nourain and Ms. Richter pause. I
10 mean, that's not as definitive a thing as STA. Really,
11 well, what did that say to you?

12 THE WITNESS: It said to me that she then detailed
13 in several paragraphs what gave her pause, which was the
14 timeliness of getting the licenses and how we should ensure
15 that we would not cause any delay to the buildings we had
16 made commitments to. If -- You know, if there was any --

17 I presumed that the whole letter was explaining
18 what gave her pause and what she thought we should do to
19 give her more confidence that we would get what we needed on
20 a timely basis.

21 JUDGE SIPPEL: Well, I know that's what you're
22 presuming, but what -- When you read this letter back in
23 April of '93 or thereabouts, what did you do, if anything,
24 with respect to finding, getting clarification on what was
25 going on that would give her pause?

1 THE WITNESS: I believe from the billing records I
2 called her and talked to her about her letter.

3 JUDGE SIPPEL: But your testimony is only with
4 respect to the STA's, which is a different issue than
5 unauthorized activations.

6 THE WITNESS: Well, she didn't say in this letter,
7 nor do I gather anything in here that talks about
8 unauthorized activation.

9 JUDGE SIPPEL: That's true.

10 THE WITNESS: Your Honor, I did not know at --

11 JUDGE SIPPEL: But there is a word, there is a
12 word that's saying that there's something here that's giving
13 me pause, and what I'm trying to find out is your thought
14 process at that time in terms of what significance do you
15 give to a letter like this?

16 THE WITNESS: I read it thoroughly and called
17 counsel in response to it, and I presume that if Jennifer
18 Richter had something on her mind that was other than in the
19 letter or that was some violation of FCC policy or something
20 really broken, either in our process or with one of people
21 or in our operations, she would have said to me, "I'm
22 certainly glad you called. We got a problem here."

23 And, Your Honor, if she did tell me that, you can
24 see the proximity of my operation with my partners. In the
25 regular course I send them everything. In the regular

1 course we have meetings on the subject of what buildings are
2 getting contracted and what buildings are getting installed.

3 I would have stopped. We would have had a
4 meeting. I would have hit an alarm. We would have gotten
5 together. We would have called in people. And we would
6 have done what we did a couple of years later when we found
7 out that there was something broken.

8 JUDGE SIPPEL: Well --

9 THE WITNESS: And, Your Honor, I did not know at
10 that time, in April 1993, that we were operating paths or
11 activating paths in an unauthorized manner. I did not have
12 conversations with Behrooz Nourain on that subject.

13 I didn't gather from this letter at all that I
14 should have conversations with him on that subject, and had
15 counsel told me that, even hinted at it, after writing to me
16 and talking to me I would have done something about it.
17 But, Your Honor, I did not know.

18 JUDGE SIPPEL: Well, you know, you're responding
19 to me. You're telling me what you would have done after the
20 torpedo hit the ship. And what I'm trying to ask you is
21 what was going on when, you know, before the torpedo hit.
22 And I'm not trying to argue with you. I'm trying to explain
23 that the context in which you are answering my question is
24 different from the one I'm asking.

25 The letter says that -- Here's your expert

1 attorney, your outside counsel, who is writing a two page
2 letter which starts off by saying that there's something
3 going on in terms of how you're handling your licensing
4 procedures that's giving me pause. And it's giving your key
5 employee pause also. And then she goes on to say -- And --

6 Well. She goes on to say, and after that she
7 says, "In order to ensure that everything" -- everything
8 Liberty does -- "is in strict accordance with the rules, and
9 to ensure that your competitors are given no ammunition
10 against you, I am writing this letter to detail the
11 parameters within which construction and operation of new
12 paths and new stations is permissible."

13 Now, how often do you get letters like that from
14 outside counsel who is doing your licensing work?

15 MR. SPITZER: Your Honor? It is very difficult,
16 of course, to object to a question being posed by the judge.
17 But this whole line of questioning --

18 To use your analogy, you're asking him how did you
19 react after the torpedo hit? His sonar doesn't even show
20 there's a torpedo in the water according to this witness who
21 has read this testimony. He has not heard Ms. Richter's
22 testimony, nor read it of course, because of the
23 sequestration order.

24 She testified here yesterday. She was never asked
25 these questions about what she did or didn't say in this

1 letter, which she could have said. That is the witness who
2 might have answered this. But there was nothing in this
3 letter this witness has testified about what he read this
4 letter to mean, what it meant to her, what it meant to him,
5 rather, what was said in this conversation, what the focus
6 was.

7 We're eating him up about why he didn't react to a
8 torpedo in the water when the sonar didn't show a torpedo.

9 JUDGE SIPPEL: Well, that's what we don't know.

10 MR. SPITZER: Well, but we have the author of the
11 letter. We've read the letter. The letter doesn't say
12 there's a torpedo. He's testified about how he read it and
13 what he understood it to mean.

14 The author didn't say there's a torpedo in the
15 water.

16 JUDGE SIPPEL: She said she had concerns.

17 MR. SPITZER: And she explained these concerns?

18 JUDGE SIPPEL: Well, she also testified to it
19 yesterday, twice.

20 MR. SPITZER: Prospective concerns.

21 JUDGE SIPPEL: That's correct.

22 MR. SPITZER: Not a single word about a violation
23 that had transpired in the past tense.

24 JUDGE SIPPEL: I'll take answers on either
25 concerns. But I'm not getting the answers, and I -- Well,